UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/1998/336
20 April 1998

ORIGINAL: ENGLISH

LETTER DATED 17 APRIL 1998 FROM THE CHAIRMAN OF THE SECURITY COUNCIL COMMITTEE ESTABLISHED BY RESOLUTION 661 (1990) CONCERNING THE SITUATION BETWEEN IRAQ AND KUWAIT ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to transmit herewith, pursuant to paragraph 15 of Security Council resolution 1153 (1998) of 20 February 1998, the report of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait (see annex). The report was adopted by the Committee on 17 April 1998.

(Signed) António MONTEIRO
Chairman
Security Council Committee established
by resolution 661 (1990) concerning the
situation between Iraq and Kuwait

98-10822 (E) 200498

/...

Annex

Report of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait pursuant to paragraph 15 of resolution 1153 (1998)

1. The present report is submitted to the Security Council pursuant to paragraph 15 of its resolution 1153 (1998) of 20 February 1998, by which the Committee is requested:

(a) To implement the measures and take action on the steps referred to in its report of 30 January 1998 (S/1998/92) with regard to the refining and clarifying of its working procedures;

(b) To consider the relevant observations and recommendations referred to in the report of the Secretary-General of 1 February 1998 (S/1998/90), in particular with a view to reducing to the extent possible the delay between the export of petroleum and petroleum products from Iraq and the supply of goods to Iraq in accordance with that resolution;

(c) To report to the Council by 31 March 1998 and thereafter to continue to review its procedures whenever necessary.

2. Since the submission to the Council of its report on 30 January, the Committee and its secretariat have been working, in close coordination with the Office of the Iraq Programme and the Treasury, to implement within its competence all adopted measures contained in paragraph 4, sections (a) and (b), of the report. The Committee is able to report today that the measures stipulated in paragraph 4 (a) (i), (ii) and 4 (b) (ii), (iii), (iv), (v), (vii), (viii), (ix), (xi) and (xii) have been implemented in full. Particularly noteworthy are the following: an orientation session was held on 19 March with the participation of more than 30 Member States and interested international organizations; a comprehensive information kit of relevant documentation was provided to participants; applications are being processed within two business days and approval letters are being issued on the basis of anticipated revenues and released on confirmation that funds are available; the validity of approval letters is extended as provided in the report, and the circulation of weekly reports on the status of applications has become standard practice. The Committee has also included a reminder in its approval letters to the exporters regarding the timely execution of approved contracts and has made that recommendation in the form of a press release to all States engaged in the export of humanitarian goods to Iraq.

3. As regards other measures referred to in paragraph 4 (a) and (b), the situation is as follows: further efforts need to be made with respect to the prioritization of applications referred to in paragraph 4 (b) (i). Regarding the grouping of contracts referred to in paragraph 4 (b) (vi), the secretariat is ready to explore ways of implementing this measure together with the Iraqi authorities. Different options for the prompt issuing and signature of approved letters are being considered by the Chairman in cooperation with the secretariat

as referred to in paragraph 4 (b) (xiii). When an application is blocked or put on hold, the relevant permanent mission is so informed in writing by the secretariat within 24 hours, including the reasons provided to the secretariat. The Committee recalls that those explanations, notably those related to dual use or to other grounds pertaining to non-conformity with the distribution plan, should be reviewed by the Committee periodically in order to ascertain whether any action could be taken to prevent similar situations.

4. Under paragraph 4 (d) of the report, the Committee is required to consider further means to improve the efficiency of the implementation of resolution 986 (1995) of 14 April 1995 and subsequent resolutions related to it. Specifically, the Committee will take action on measures referred to in paragraph 4 (d) (i), (ii), (iii) and (iv). In this regard:

(a) Pursuant to paragraph 4 (d) (i), the Committee has adopted guidelines and points of understanding on simplified procedures to approve applications for foodstuffs (see appendix);

(b) The Executive Director of the Iraq Programme informed the Committee on 20 March that the suggestions contained in paragraph 4 (d) (ii) of the report would be implemented effective 30 March. Since that date, reports on the status of applications have been made available to all Committee members and other States, upon request, by electronic means;

(c) The Committee received, on 14 March 1998, a report by the Treasurer of the United Nations pursuant to paragraph 4 (d) (iii) concerning the streamlining of all aspects of the procedures regarding the opening of letters of credit by the Banque Nationale de Paris (BNP). On the processing side, the report notes that these refined procedures of the Committee will accelerate the issuance of letters of credit. The report welcomes the posting in New York of a representative of the Central Bank of Iraq with a view to expediting the resolution of discrepancies. On the credit issue, the report notes that attention has been given to suggestions made by the Committee that the issuance process could be accelerated, in theory, if letters of credit could be issued before the necessary cash collateral is available in the United Nations Iraq Account. This concept has been researched. According to the report, no banking institution is willing to take the risk associated with such an extension of credit because of prevailing commercial and legal constraints. The Treasurer will continue to pursue practical options for streamlining the issuance of letters of credit by BNP so as to hasten the delivery of humanitarian supplies to Iraq;

(d) On the issue of reimbursement of the 53 per cent account from the 13 per cent account for joint purchases referred to in paragraph 4 (d) (iv) of the Committee's report, the secretariat is currently in the process of finalizing the necessary review and recommendations, which will soon be presented to the Committee for its consideration.

5. Pursuant to paragraph 15 of resolution 1153 (1998), the Committee considered the relevant observations and recommendations contained in the report of the Secretary-General of 1 February with a view to expediting the approval process and contributing further to the timely arrival of humanitarian supplies

in Iraq. Most of the measures recommended by the Secretary-General in paragraph 58 of his report are similar to those regarding the refined working procedures of the Committee contained in its report of 30 January. With regard to measures referred to in paragraph 58 (b) of the report of the Secretary-General that require additional consideration on its part, the Committee will continue its work in that respect.

6. The Committee will continue to review the implementation of the measures discussed in its report of 30 January and further refine its working procedures as necessary in the light of the actual needs and requirements in order to enhance further its efficiency in the implementation of resolution 986 (1995) and all other relevant resolutions.

Appendix

Guidelines and points of understanding on simplified procedures to approve applications for foodstuffs

1. The Committee will select, upon recommendation by the secretariat, a number of technical experts within the Office of the Iraq Programme upon whom the Committee will confer the authority to determine whether applications for foodstuffs are in order under these guidelines and points of understanding and to submit them for approval to the Chairman of the Committee in accordance with the conditions set out in paragraph 5 below.

2. An application for foodstuffs will be reviewed by two of the secretariat's technical experts on behalf of the Committee to determine whether the contract meets all criteria established by the Committee.

3. No technical expert shall review an application submitted by the permanent mission of the State of nationality of that expert.

4. The technical experts will examine and assess each application for foodstuffs on a case-by-case basis. The order of consideration by the experts will conform, where applicable, to priorities reflected in resolution 1153 (1998) of 20 February 1998 and in paragraph 4 (b) (i) of document S/1998/92.

5. An application for foodstuffs will be considered eligible for payment from the United Nations Iraq Account, subject to the availability of funds, on the date that the Chairman of the Committee signs a letter of approval following determination by the technical experts that such application meets the following conditions:

(a) The application complies with all relevant Security Council resolutions and the established rules and procedures of the Committee, as well as the guidelines and points of understanding contained herein or as amended by the Committee;

(b) The application is in full compliance with the approved distribution plan and its annexes, in terms of both quality and quantity;

(c) The price for each foodstuff quoted in the application falls within the range of the pricing mechanism approved by the Committee pursuant to paragraph 6 below;

(d) The technical experts have no reason to determine that it would be advisable to submit the application to the Committee according to the standard approval procedure, such as a deviation from normal commercial practice as reported by the independent inspection agents.

6. The Government of Iraq shall submit a pricing mechanism for the procurement of foodstuffs listed in the annexes to the distribution plan for review by the Committee. The technical experts will assess the pricing mechanism, in

particular whether it reflects fair market value, and will provide analysis and recommendations to the Committee. The Committee will take a decision on the pricing mechanism according to its no-objection procedure within two business days. Adjustments to the pricing mechanism may be submitted by the technical experts for review by the Committee as appropriate. The approved pricing mechanism will remain in effect until the new one is approved by the Committee.

7. Should it be determined by the technical experts that an application for foodstuffs does not conform to these guidelines and points of understanding, the secretariat will immediately submit such application, together with its findings, to the Committee for its consideration.

8. On a weekly basis the secretariat will submit a comprehensive report to the Committee on the applications for foodstuffs that have been examined and assessed by the secretariat's technical experts.

9. A copy of the contract of each application for which a letter of approval is submitted by the secretariat to the Chairman for signature will be circulated to the members of the Committee for information upon request.

10. The Committee will review these guidelines and points of understanding as necessary and amend them as appropriate.

11. Any Committee member may call for an urgent meeting of the Committee to consider revising or revoking these guidelines and points of understanding. Pending a decision by the Committee, the authority conferred upon the secretariat for foodstuff applications will be suspended and standard procedures will apply.

12. These guidelines and points of understanding will come into effect on the day on which the Secretary-General reports to the Security Council pursuant to paragraph 5 of its resolution 1153 (1998).